

02-278



CHAIRMAN

Federal Communications Commission
Washington, D.C.

July 5, 2005

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AUG - 1 2005

Federal Communications Commission
Office of the Secretary

The Honorable Julia Carson
U.S. House of Representatives
1535 Longworth House Office Building
Washington, D.C. 20515

Dear Congresswoman Carson:

Thank you for your letter to my predecessor, former Chairman Michael K. Powell, regarding the Commission's rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"), and the Consumer Bankers Association's ("CBA") Petition for Declaratory Ruling on Preemption of Indiana Telemarketing Rules. The CBA petition is one of several pending petitions for declaratory ruling seeking preemption of certain state telemarketing laws.

You expressed concern that debate has been limited on these issues, and requested that the Commission reopen the public comment period on the CBA petition. In light of recent developments related to issues raised in these petitions, on May 13, 2005, the Commission issued a supplemental Public Notice reopening the comment cycle in the CBA proceeding, as well as in the other state-specific preemption proceedings. Interested parties and the public have been given thirty days from publication of the Notice in the Federal Register to file comments and twenty days thereafter to file reply comments. I am enclosing a copy of the Notice for your information. I am very sensitive to your concerns, and want to assure you that the Commission will consider the issues associated with all of these petitions very carefully.

We have placed a copy of your correspondence in the public record for these proceedings, and will consider your views carefully along with the record developed in the proceeding. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

Kevin J. Martin

Enclosure

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CHAIRMAN

Federal Communications Commission
Washington, D.C.

July 5, 2005

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AUG - 1 2005

Federal Communications Commission
Office of the Secretary

The Honorable Steve Buyer
U.S. House of Representatives
2230 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Buyer:

Thank you for your letter to my predecessor, former Chairman Michael K. Powell, regarding the Commission's rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"), and the Consumer Bankers Association's ("CBA") Petition for Declaratory Ruling on Preemption of Indiana Telemarketing Rules. The CBA petition is one of several pending petitions for declaratory ruling seeking preemption of certain state telemarketing laws.

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Sincerely,

Kevin J. Martin

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CHAIRMAN

Federal Communications Commission
Washington, D.C.

July 5, 2005

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AUG - 1 2005

The Honorable E. Benjamin Nelson
United States Senate
720 Hart Senate Office Building
Washington, D.C. 20510

Federal Communications Commission
Office of the Secretary

Dear Senator Nelson:

Thank you for your April 18, 2005 letter regarding the Commission's rules implementing the Telephone Consumer Protection Act of 1991 (TCPA) and the concerns of many teleservices companies that the Commission has failed to declare and enforce its exclusive jurisdiction over interstate telemarketing calls.

The Commission has received a petition filed jointly by the Direct Marketing Association (DMA) and 32 other organizations regarding regulation of interstate telemarketing calls, as well as seven other petitions for declaratory ruling seeking preemption of certain state telemarketing laws. These petitions are currently under review and are pending before the Commission. On May 13, 2005, the Commission issued Public Notices reopening the comment cycle in these proceedings, and inviting commenters to address recent developments, including the proliferation of state laws related to telemarketing. Interested parties and the public have been given thirty days from publication of the Notices in the Federal Register to file comments, and twenty days thereafter to file reply comments. I am enclosing the Notice regarding the DMA petition for your information.

We have placed a copy of your correspondence in the public record for these proceedings, and will consider your views carefully along with the record developed in the proceeding. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

Kevin J. Martin

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CHAIRMAN

Federal Communications Commission
Washington, D.C.

July 5, 2005

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AUG - 1 2005

Federal Communications Commission
Office of the Secretary

The Honorable Mike Pence
U.S. House of Representatives
426 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Pence:

Thank you for your letter to my predecessor, former Chairman Michael K. Powell, regarding the Commission's rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"), and the Consumer Bankers Association's ("CBA") Petition for Declaratory Ruling on Preemption of Indiana Telemarketing Rules. The CBA petition is one of several pending petitions for declaratory ruling seeking preemption of certain state telemarketing laws.

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Sincerely,

Kevin J. Martin

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CHAIRMAN

Federal Communications Commission
Washington, D.C.

July 5, 2005

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AUG - 1 2005

Federal Communications Commission
Office of the Secretary

The Honorable Mike Sodrel
U.S. House of Representatives
1508 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Sodrel:

Thank you for your letter to my predecessor, former Chairman Michael K. Powell, regarding the Commission's rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"), and the Consumer Bankers Association's ("CBA") Petition for Declaratory Ruling on Preemption of Indiana Telemarketing Rules. The CBA petition is one of several pending petitions for declaratory ruling seeking preemption of certain state telemarketing laws.

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We have placed a copy of your correspondence in the public record for these proceedings, and will consider your views carefully along with the record developed in the proceeding. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. Martin".

Kevin J. Martin

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CHAIRMAN

Federal Communications Commission
Washington, D.C.

July 5, 2005

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AUG - 1 2005

Federal Communications Commission
Office of the Secretary

The Honorable Peter J. Visclosky
U.S. House of Representatives
2256 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Visclosky:

Thank you for your letter to my predecessor, former Chairman Michael K. Powell, regarding the Commission's rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"), and the Consumer Bankers Association's ("CBA") Petition for Declaratory Ruling on Preemption of Indiana Telemarketing Rules. The CBA petition is one of several pending petitions for declaratory ruling seeking preemption of certain state telemarketing laws.

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Sincerely,

Kevin J. Martin

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02-218



CHAIRMAN

Federal Communications Commission
Washington, D.C.

July 5, 2005

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AUG - 1 2005

Federal Communications Commission
Office of the Secretary

The Honorable Mark Souder
U.S. House of Representatives
2231 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Souder:

Thank you for your letter to my predecessor, former Chairman Michael K. Powell, regarding the Commission's rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"), and the Consumer Bankers Association's ("CBA") Petition for Declaratory Ruling on Preemption of Indiana Telemarketing Rules. The CBA petition is one of several pending petitions for declaratory ruling seeking preemption of certain state telemarketing laws.

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Sincerely,

Kevin J. Martin

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CHAIRMAN

Federal Communications Commission
Washington, D.C.

July 5, 2005

02-278

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AUG - 1 2005

Federal Communications Commission
Office of the Secretary

The Honorable John Hostettler
U.S. House of Representatives
1214 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Hostettler:

Thank you for your letter to my predecessor, former Chairman Michael K. Powell, regarding the Commission's rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"), and the Consumer Bankers Association's ("CBA") Petition for Declaratory Ruling on Preemption of Indiana Telemarketing Rules. The CBA petition is one of several pending petitions for declaratory ruling seeking preemption of certain state telemarketing laws.

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Sincerely,

Kevin J. Martin

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CHAIRMAN

Federal Communications Commission
Washington, D.C.

July 5, 2005

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Federal Communications Commission
Office of the Secretary

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AUG - 1 2005

Federal Communications Commission
Office of the Secretary

The Honorable Chris Chocola
U.S. House of Representatives
510 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Chocola:

Thank you for your letter to my predecessor, former Chairman Michael K. Powell, regarding the Commission's rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"), and the Consumer Bankers Association's ("CBA") Petition for Declaratory Ruling on Preemption of Indiana Telemarketing Rules. The CBA petition is one of several pending petitions for declaratory ruling seeking preemption of certain state telemarketing laws.

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Sincerely,

Kevin J. Martin

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Congress of the United States
Washington, DC 20515

02-278

March 11, 2005

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AUG - 1 2005

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Federal Communications Commission
Office of the Secretary

Dear Chairman Powell:

As members of the Indiana delegation, we are writing you regarding the petition filed by the Consumer Bankers Association (CBA) asking the Federal Communications Commission to preempt sections of Indiana's Telephone Privacy Law. If successful, this petition would remove protections enjoyed by over three million Indiana residents under the privacy law.

Indiana's privacy law is one of the strongest and most popular in the nation, attracting participation by more than 1.6 million households and providing protection for over 3.6 million Hoosiers, nearly 60% of Indiana's population. Nearly 98% of these households have experienced a reduction in unwanted calls since the adoption of the law, bringing the average number of calls per week down from more than twelve to less than two.

Indiana's law is more stringent than the national law, which exempts businesses with whom a consumer has had a transaction within the eighteen months. Indiana's law allows consumers the option to accept calls by providing consent in advance to vendors of their choice, allowing consumers to permit calls from businesses with whom they have an established relationship without yielding their residential privacy to all vendors. The petition by the CBA seeks to undermine this provision by asking the FCC to preempt this section of Indiana's law and permit businesses exempted under the national law to contact Indiana residents, regardless of their preferences. One of the primary reasons for the success of the Indiana law is its lack of exemptions, and approval of this petition would significantly weaken the Indiana law, to the detriment of Hoosiers. Furthermore, the preemption of Indiana's law is likely to have a similar impact on the residents in a number of other states who currently benefit from similar state-initiated protections.

In our view the Congressional intent of the Do Not Call Implementation Act was to provide a nationwide minimum standard of protection for all Americans, while allowing states that choose to exceed the standard to do so. States are allowed to

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maintain laws that are stricter than national standards in health, safety, environment, infrastructure, etc. We ask you to uphold states' rights to have more stringent laws than the national standards and deny the petition by the CBA.

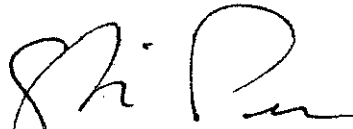
Preemption of a state law is a serious matter and should only be done with the utmost deliberation, allowing all interested parties to participate in the process. We are concerned that an expedited process has limited debate on this important issue and we urge the FCC to reopen the public comment period so that all interested parties have the opportunity to fully voice their views.

When considering this petition, we urge the Commission to move with the utmost caution in order to protect Indiana's law and give every consideration to the privacy interests of Indiana residents. Thank you for your consideration.

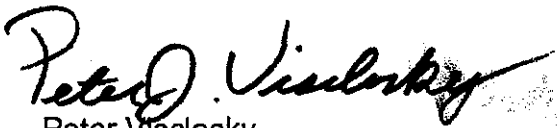
Sincerely,



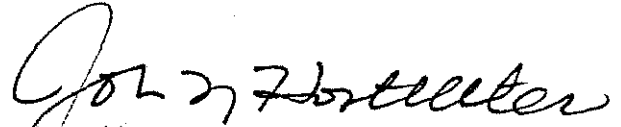
Steve Buyer
Member of Congress



Mike Pence
Member of Congress



Peter Visclosky
Member of Congress



John Hostettler
Member of Congress



Mike Sodrel
Member of Congress



Mark Souder
Member of Congress



Chris Chocola
Member of Congress



Julia Carson
Member of Congress

E. BENJAMIN NELSON
NEBRASKA

United States Senate
WASHINGTON, DC 20510-2706

April 18, 2005

The Honorable Kevin J. Martin, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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AUG - 1 2005

Federal Communications Commission
Office of the Secretary

Dear Chairman Martin:

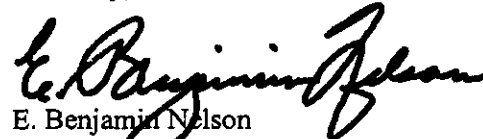
I would like to bring your attention to an issue that is of great importance to teleservices companies in Nebraska, which employ hundreds of workers in my state. These companies are concerned the Federal Communications Commission (FCC), which has jurisdiction over interstate telecommunications, is not adequately enforcing federal laws regarding telemarketing.

Specifically, they are concerned that, despite having exclusive jurisdiction over interstate telecommunications and telemarketing calls, the FCC has failed to declare and enforce that jurisdiction. They believe this has allowed states to exceed federal law in their regulation and enforcement of interstate telemarketing. Thus, sellers and telemarketers have had to seek preemption of state laws on a case-by-case basis – a costly and time-consuming requirement.

It is my understanding that, generally, these state regulations cover subjects already fully addressed by federal regulations, while at the same time imposing substantial compliance burdens and risks on sellers and telemarketers. In short, I agree with my constituent teleservices companies that this is a hardship and poses considerable risk of costing American jobs.

Thank you for allowing me to bring this matter to your attention, and I look forward to your response.

Sincerely,


E. Benjamin Nelson
United States Senator

EBN:ajs

cc: Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps, Commissioner
Commissioner Jonathan S. Adelstein, Commissioner

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287 DENNEY FEDERAL BUILDING
100 CENTENNIAL MALL NORTH
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(402) 441-4600
FAX: (402) 476-8753

FIELD REPRESENTATIVE
POST OFFICE Box 1033
CHADRON, NE 69337
(308) 430-0587

FIELD REPRESENTATIVE
POST OFFICE Box 1891
SCOTT'S BLUFF, NE 69363
(308) 631-7614

7602 PACIFIC STREET
SUITE 205
OMAHA, NE 68114
(402) 391-3411
FAX: (402) 391-4725

(202) 224-6551
FAX: (202) 228-0012

<http://bennelson.senate.gov>

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United States Senate

WASHINGTON, DC 20510

March 14, 2005

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

02-278
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MKP
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AUG - 1 2005

Federal Communications Commission
Office of the Secretary

Dear Chairman Powell:

We are writing you to express our opposition to the petition filed by the Consumer Bankers Association (CBA) with the Federal Communications Commission (FCC) on November 19, 2004. This petition asks the Commission to issue a declaratory ruling preempting sections of Indiana's Telephone Privacy law. If successful, it would remove protections enjoyed by over three million Indiana residents under the State's enormously successful "Do-Not-Call" law.

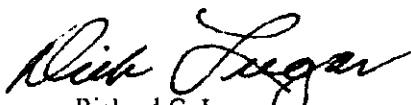
The CBA's petition specifically requests that the FCC preempt Indiana's laws to the extent that they prohibit telemarketing calls to persons and entities with which the caller has an established business relationship - as defined in rules promulgated by the FCC under federal law. In response to this petition the Commission initiated proceedings on December 7, 2004 (CG Docket No. 02-278). The FCC solicited comments on this case through February 2 and responses were due February 17, 2005.

As Senators for the State of Indiana, we urge the Commission to proceed with the utmost care and caution as it reviews this case. Indiana's Do-Not-Call program is the most utilized consumer protection law in the history of the state, and our constituents are contacting us on a daily basis to express their dismay that their rights under this law might be abrogated. Further, preemption of Indiana's law is likely to have a similar impact on the residents of a number of other states who currently benefit from similar state-initiated protections.


We acknowledge the federal government's supremacy in matters of interstate commerce as enshrined in the Constitution. But the Supreme Court has generally approached the issue of federal preemption of state law "with the assumption that the historic police powers of the States were not to be superseded by [a federal law] unless that was the clear and manifest purpose of Congress" [*Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 605 (1991)]. With that assumption in mind, we would like to encourage the Commission to give Indiana's statute - which predates Congressional action in this area - every consideration.

Along those lines, we urge the Commission to move at a deliberate and measured pace as it considers the interests not only of the people of Indiana, but of all Americans who are currently afforded greater protections than those provided at the federal level.

Sincerely,



Richard G. Lugar
United States Senator



Evan Bayh
United States Senator

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CHAIRMAN

Federal Communications Commission
Washington, D.C.

July 5, 2005

02-218

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AUG - 1 2005

Federal Communications Commission
Office of the Secretary

The Honorable Richard G. Lugar
United States Senate
306 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Lugar:

Thank you for your letter to my predecessor, former Chairman Michael K. Powell, regarding the Commission's rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"), and the Consumer Bankers Association's ("CBA") Petition for Declaratory Ruling on Preemption of Indiana Telemarketing Rules. The CBA petition is one of several pending petitions for declaratory ruling seeking preemption of certain state telemarketing laws.

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We have placed a copy of your correspondence in the public record for these proceedings, and will consider your views carefully along with the record developed in the proceeding. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

Kevin J. Martin

Enclosure

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CHAIRMAN

Federal Communications Commission
Washington, D.C.

July 5, 2005

02-278

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AUG - 1 2005

Federal Communications Commission
Office of the Secretary

The Honorable Evan Bayh
United States Senate
463 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Bayh:

Thank you for your letter to my predecessor, former Chairman Michael K. Powell, regarding the Commission's rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"), and the Consumer Bankers Association's ("CBA") Petition for Declaratory Ruling on Preemption of Indiana Telemarketing Rules. The CBA petition is one of several pending petitions for declaratory ruling seeking preemption of certain state telemarketing laws.

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Sincerely,

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